Supreme Court, U.S.
FILED
JUN 25 2010
OFFICE OF THE CLERK

No. 10-7

In The

Supreme Court of the United States

JOSEPH A. FESSLER and ANN FESSLER, his wife,

Petitioners,

v.

KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES-BARRE; RICHARD GELHARD, Ex Deputy Executive Director – Wilkes-Barre; LEWIS ATTORDO; JOHN G. BRAVACOS, Relocation Area Director, Department of Housing and Urban Development; PAUL CAIN, Ex Area Director of Housing and Director of Housing and Urban Development; ALPHONSO JACKSON, Secretary of Housing and Urban Development,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

JOSEPH A. FESSLER
ANN FESSLER
120 Solomon Street
Ashley, Pennsylvania 18706
Telephone: (570) 826-0060

QUESTIONS PRESENTED

SOME OF THE REASONS I SHOULD BE AWARDED LEGAL FEES – WHY DID REDEVELOPMENT AUTHORITY REFUSE TO PAY ME AND MY WIFE ANN FESSLER RELOCATION PAYMENT AND FAIL TO INFORM US OF RIGHTS AND BENEFITS UNDER HOUSING AND URBAN DEVELOPMENT RELOCATION MANUAL.

WHY MY LAWYER AND REDEVELOPMENT LAWYER NEVER BROUGHIT THE QUESTION OF RELOCATION PAYMENT UP IN COURT.

WHY WE HAD TO APPEAL OURSELVES TO REDEVELOPMENT AUTHORITY HOUSING AND URBAN DEVELOPMENT, PHILADELPHIA, PETITION TO LUZERNE COUNTY COURT, MIDDLE DISTRICT COURT, COURT OF APPEALS. NO COURT OR ATTORNEYS WILL HANDLE IT FOR US. AREA DIRECTOR PAUL CAIN OF PHILADELPHIA SAID I COULD TAKE IT TO COURT JUDICIAL REVIEW THROUGH THE COURTS AFTER I FILED AN APPEAL BY THE GRIEVANCE PROCEDURES RELATING TO CLAIMS AND PAYMENTS. NO COURT WILL HANDLE IT.

WHY WAS I GIVEN THE NAME OF "JOSEPH FESSLER RENTALS" OR "FESSLER RENTALS" WHEN THEY PUT IT ON RELOCATION PAPERS WHEN THERE IS NO SUCH NAME. THIS WAS GIVEN TO ME.

QUESTIONS PRESENTED – Continued

WHY LEWIS ATTORDO, RELOCATION SPECIALIST, NEVER INFORMED MY WIFE ANN FESSLER ABOUT WHY HE NEVER INFORMED HER ABOUT ANY RELOCATION BENEFITS AND HER NAME SHOULD APPEAR ON ALL RELOCATION PAPERS BECAUSE SHE IS PART OWNER.

AFTER ALL JUDGES, AND COURTS, U.S. ATTORNEY, WILKES-BARRE REDEVELOPMENT AUTHORITY GOT THE LETTER FROM PAUL CAIN WHICH I SUBMITTED TO THEM ON ALL MY LAWSUITS. THEY ALL FAILED TO HONOR THIS LETTER DATED JANUARY 15, 1976. GIVEN ME PERMISSION JUDICIAL REVIEW THROUGH THE COURTS. THEY ALL RECEIVED MANY DOCUMENTS FROM ME THE HOUSING AND URBAN DEVELOPMENT, HANDBOOK REGARDING WHAT BENEFITS I AM ENTITLED TO.

WHY THE JUDGES AND COURTS FAIL TO HONOR WHAT I AM ENTITLED TO.

DO ALL JUDGES, COURTS, U.S. ATTORNEY, WILKES-BARRE REDEVELOPMENT AUTHORITY HAVE A COPY OF HOUSING AND URBAN DEVELOPMENT (RELOCATION HANDBOOK OR MANUAL) WHICH COVERS EMINENT DOMAIN LAWS. THIS SAID THE CASES SHOULD BE SIMPLE CASES AND HANDLED QUICKLY WITHOUT LEGAL HARASSMENT BY THE COURTS, AND IS THE BIBLE FOR EMINENT DOMAIN LAWS.

QUESTIONS PRESENTED – Continued

WHY HOUSING AND URBAN DEVELOPMENT FAILED TO OVERSEE THE OPERATION WILKES-BARRE REDEVELOPMENT AUTHORITY COMPLY WITH TITLE VI OF CIVIL RIGHTS ACT OF 1964 AND TITLE VIII OF CIVIL RIGHTS ACT OF 1968 ACCORDING TO HUD HANDBOOK.

WHY MY CASE HAS BEEN IN THE COURT SO LONG IS BECAUSE THEY REFUSE TO JUDICIAL REVIEW AND STATE FAIR IMPARTIAL CONSIDERATION OF HIS CLAIM ON ITS MERITS UPON EXHAUSTION OF SUCH ADMINISTRATIVE REMEDIES. ALSO SECTION 201 OF THE ACT FAIR AND EQUITABLE TREATMENT IN ORDER THAT THE DISPLACED PERSON "NOT SUFFER DISPROPORTIONATE INJURIES AS A RESULT OF PROGRAMS DESIGNED FOR THE BENEFIT OF PUBLIC AS A WHOLE." THAT IS WHY THE COURTS HAVE NOT LIVED UP TO THEIR OBLIGATIONS.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

JOSEPH A FESSLER AND ANN FESSLER, HIS WIFE RESPECTFULLY PRAY A WRIT OF CERTIORARI ISSUED TO REVIEW THE DECISION OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED ON JANUARY 28, 2010.

OPINIONS BELOW

THE COURT OF MIDDLE DISTRICT OF PENNSYLVANIA ENTERED ITS MEMORANDUM DECISION 25 day OF SEPTEMBER 2009 COPY OF THE ORDER IS ATTACHED AS APPENDIX A

THE COURT OF APPEALS ENTERED ITS ORDER DATED JANUARY 28, 2010. A COPY OF THIS ORDER IS ATTACHED AS APPENDIX B

JURISDICTIONAL STATEMENT

THE PETITION FOR REHEARING WAS DENIED ON APRIL 6, 2010. the COURT HAS JURISDICTION UNDER 28 U.S.C. § 1254(1)

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT V: NOR SHALL ANY PERSON * * * BE DEPRIVED OF LIFE LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW * * *

STATEMENT OF THE CASE

THIS IS TO INFORM THE COURT THAT WILKES BARRE REDEVELOPMENT AUTHORITY STARTED THESE COURT ACTIONS BY CONDEMNATION OF ALL MY PROPERTIES AT 289, 291, 291½, 322, 314, REAR 312 EAST MARKET STREET 16 AND REAR 16 SOUTH GRANT STREET ALL OF WILKES BARRE, PA. THE REASON WHY I BEEN IN THE COURTS FOR THE PAST 35 YEARS IS BECAUSE THE COURTS FAIL TO HONOR PAUL CAIN HUD AREA DIRECTOR OF PHILADELPHIA, PA. LETTER DATED 15 JANUARY 1976 ABOUT MY RELOCATION PAYMENT WHICH I AM ENTITLE TO. HE STATED I COULD TAKE IT JUDICIAL REVIEW THROUGH THE COURTS NO COURTS WILL HONOR HIS LETTER. THATS WHY I BEEN TAKING IT TO COURTS SO MANY TIMES.

ON OCTOBER 29, 2007 I FILED ANOTHER COMPLAINT AGAINST KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES BARRE PA. TO "TO APPEAL AND REVIEW OF ALL PHASES OF RELOCATION PAYMENTS UNDER FEDERAL AND STATE LAWS ALSO PAYMENT OF

ALL LEGAL FEES AND DAMAGES. CITY OF WILKES BARRE REDEVELOPMENT AUTHORITY DENIAL RELOCATION PAYMENT FOR PROPERTIES TAKEN BY EMINENT DOMAIN AND VIOLATED CIVIL RIGHT ACT OF 1964 AND TITLE VIII OF CIVIL RIGHTS ACT OF 1968 IN RELOCATION HAND BOOK 1371. 1 REV APPENDIX 2 42.105 RELOCATION IN 1371. 1 REV CHAPTER 6, SECTION 2 PAGES 6- 14-15, chapter 2 SECTION PAGES 2-18-19. THIS WAS FILED IN UNITED STATES DISTRICT COURT.

WILKES BARRE REDEVELOPMENT AUTHORITY ATTORNEYS FILED PAPERS TO THE COURT FOR SANCTIONS AGAINST THE FESSLERS FOR THEIR LEGAL WORK FOR $ FIVE THOUSAND THREE HUNDRED FORTY THREE AND $^{48}/_{100}$.

AFTER REVIEW OF THIS I FIGURE I AM ENTITLE TO ALL MY LEGAL FEES SO I FILE WITH COURT FOR FOUR HUNDRED EIGHTY THOUSAND FOR ALL MY CASES I FILED THIS DOES NOT INCLUDE MY APPEAL TO THE THIRD CIRCUIT COURT OR NOW TO SUPREME COURT.

THE COURT TURNED DOWN WILKES BARRE REDEVELOPMENT SANCTION AGAINST THE FESSLERS. THEY ALSO DID THE SAME THING TO FESSLER BUT NOW I AM APPEALING IT TO THE HIGHER COURTS BECAUSE NOBODY WILL HONOR PAUL CAIN LETTER FOR JUDICIAL

REVIEW BY THE COURTS. I BELIEVE I AM ENTITLE TO ALL MY LAWYER FEES.

I TOOK MY CASES TO U.S. DISTRICT COURT FOUR TIMES, COURT OF APPEALS THREE TIMES NOW ALSO THE SUPREME COURT THREE TIMES. HUDS HAND BOOK SAID I COULD TAKE IT TO COURT AS MANY TIMES I WANT UNTIL I AM SATISFY BY THE FESSLERS WHICH I AM DOING.

REASONS WHY WRIT SHOULD ISSUE

THE THIRD CIRCUIT COURT WAS WRONG IN 1973 THAT I GOT ENOUGH MONEY FROM WILKES BARRE REDEVELOPMENT AUTHORITY. THE REASON I AM APPEALING THIS BECAUSE I DIDN'T GET BUSINESS RELOCATION. THATS WHY MY APPEAL WAS MADE BY ME TO WILKES BARRE REDEVELOPMENT AND TO PAUL CAIN AREA DIRECTOR OF HUD PHILADELPHIA THATS WHY HE STATED IN HIS LETTER DATED 15 JANUARY 1976 THAT I COULD TAKE FOR JUDICIAL REVIEW THROUGH THE COURTS. THATS WHY I BEEN DOING FOR THE PAST 6 YEARS. ALSO THE THIRD CIRCUIT WOULD NOT ACCEPT MY MAIL FIRST CLASS, CERTIFY, EXPRESS MAIL IS THE ONLY WAY THEY WOULD ACCEPT. ALSO THEY NEVER SEND ME THE MAIL ON TIME. THEY ALSO GAVE LEGAL ADVICE TO THE DEFENDANTS. REQUESTING

LEGAL FEES ACCORDING TO HUD HANDBOOK MANUAL SEC. 394(a) HUD HAND BOOK SAY I AM ENTITLE TO LITIGATION EXPENSES (b) (c) sec. 305(1) because MY PROPERTIES WERE FRAUDULENT TAKEN BECAUSE OF BUSINESS RELOCATION WAS NOT GIVEN TO US.

IN ALL CASES, ANN FESSLER WAS HALF OWNER OF ALL REAL ESTATE AND HER NAME SHOULD BE INCLUDED ON ALL RELOCATION PAPERS AND SHOULD HAVE BEEN INFORMED OF WHAT RELOCATION SHE WAS ENTITLED TO. SHE NEVER WAS INFORMED.

RELOCATION GAVE JOSEPH FESSLER THE NAME OF JOSEPH FESSLER RENTALS AND ALSO JOSEPH FESSLER t/a AS JOSEPH FESSLER RENTALS WHEN THERE IS NO SUCH NAME.

STATEMENT OF REVIEW

PAUL CAIN LETTER DATED ON 15 JANUARY 1976 STATED THE REASON I WAS TURN DOWN BY WILKES BARRE REDEVELOPMENT, AND HUD RELOCATION BENEFITS, WAS BECAUSE I HAD ANOTHER BUILDING IN THE SAME BUSINESS WHICH IS NOT BEING ACQUIRED FOR THE PROJECT. 601-A BUT THEY SHOULD HAVE READ SECTION 601. – B EXCEPTION THE SOLE REMAINING FACILITY OF THE BUSINESS THAT HAS BEEN DISPLACED FROM ITS PRINCIPAL LOCATION SHALL NOT BE CONSIDERED

"ANOTHER ESTABLISHMENT" THAT SHOWS THEY BOTH LIED IN THERE FINDING.

THATS WHY I HAVE TAKEN TO U.S. DISTRICT COURT FOUR TIMES AND THE COURT OF APPEAL THREE TIMES THIRD CIRCUIT COURT ALSO TO THE SUPREME COURT THREE TIMES AND PENNSYLVANIA COURT ONE TIME NOBODY WILL HONOR PAUL CAIN LETTER AREA DIRECTOR OF PHILADELPHIA. I BROUGHT THIS UP TO ALL COURTS WITH NO RESULT FROM ANY BODY THIS ACCORD TO HUD HANDBOOK AND MANUAL. THAT WHY THE COURT SHOULD AWARD ME ALL MY LEGAL FEES. BECAUSE OF HUD AND REDEVELOPMENT FAILURE TO LOOK INTO THIS MATTER BEFORE LETTING ME TO TAKE TO COURT SO MANY TIMES. AND SETTLE WITH ME, ALSO THE COURTS ARE AT FAULT TO.

CONCLUSION

FOR THESE REASONS, THE COURT SHOULD GRANT THIS PETITION FOR WRIT OF CERTIORARI.

RESPECTFULLY SUBMITTED,

JOSEPH A. FESSLER
ANN FESSLER
20 Solomon Street
Ashley, Pennsylvania 18706
Telephone: (570) 826-0060

CLD-073 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-4100

JOSEPH A. FESSLER; ANN FESSLER,

Appellants

v.

KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES BARRE; RICHARD GELHARD, Ex Deputy Executive Director Wilkes Barre; LEWIS ATTORDO; JOHN G. BRAVACOS, Area Director Department of Housing and Urban Development; PAUL CAIN, Ex Area Director of Housing and Director of Housing and Urban Development; ALPHONSON JACKSON, Secretary of Housing and Urban Development; MARTIN C. CARLSON; HOUSING URBAN DEVELOPMENT; ACTING US ATTORNEY

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 07-cv-1939)
District Judge: Honorable Thomas I. Vanaskie

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6(a)
December 17, 2009

Before: BARRY, FISHER AND
VAN ANTWERPEN, *Circuit Judges*

(Opinion filed: January 28, 2010)

OPINION

PER CURIAM

Joseph Fessler and Ann Fessler ("the Fesslers") appeal from an order of the United States District Court for the Middle District of Pennsylvania denying their motion entitled "Requestin [sic] Countersuit Against Kirk Sauer Community Development Wilkes Barre, PA. Motion for Sanctions." For the reasons set forth below, we will summarily affirm. *See* I.O.P. 10.6.

In 1973, the Fesslers' property was taken by eminent domain by the City of Wilkes-Barre, Pennsylvania. Following a denial of what they deemed an adequate relocation benefit, the Fesslers filed numerous state and federal lawsuits against the City of Wilkes-Barre Redevelopment Authority and the United States Department of Housing and Urban Development.

On October 24, 2007, the Fesslers, proceeding pro se, filed an action in the District Court against several current and former employees of the Wilkes-Barre Redevelopment Authority and the Department of Housing and Urban Development related to their dissatisfaction with the City of Wilkes-Barre's denial of a relocation payment to the Fesslers. The

Defendants moved to dismiss the case and the Fesslers moved for default judgment against Defendant Alphonso Johnson on grounds that he failed to timely answer their Complaint.

On August 22, 2008, the District Court granted Defendants' motions to dismiss the case and denied the Fesslers' motion for default judgment. The Fesslers filed a timely appeal to this Court and we summarily affirmed the judgment of the District Court. *See Fessler v. Sauer,* C.A. No. 08-3645 (March 16, 2009).

In September 2009, the Fesslers filed in the District Court the current motion entitled "Requestin [sic] Countersuit Against Kirk Sauer Community Development Wilkes Barre, PA. Motion for Sanctions."[1] The District Court denied the motion without opinion and the Fesslers have appealed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. The District Court appropriately denied the Fesslers' motion. By the time that the Fesslers filed their motion in the District Court, final judgment had already been entered in their case. Because the Fesslers' motion did not seek relief under a specific Federal Rule of Civil Procedure, and mindful that Federal Rules of Civil Procedure 59 and 60 govern the opening of final judgments, we consider whether the

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[1] The Defendants in the case had previously filed a motion for sanctions and attorneys fees against the Fesslers which the District Court denied.

motion should have been characterized as a motion for relief thereunder. It should not have been.

First, the Fesslers would not have been entitled to relief under Rule 59(e) as the motion was filed beyond the ten days provided for under the Rule. *See* Fed. R. Civ. P. 59. Second, the Fesslers would not have been entitled to relief under Rule 60(b) as the they did not set forth any basis for granting relief under the Rule, including the catch-all provision in Rule 60(b)(6) that allows a court to relieve a party from a judgment for "any other reason that justifies relief." *See* Fed. R. Civ. P. 60; *see also Budget Blinds, Inc. v. White,* 536 F.3d 244, 251 (3d Cir. 2008). Even construing the motion liberally, we cannot discern any conceivable basis to reopen the judgment.

As there is no substantial question presented by this appeal, we will summarily affirm. *See* Third Cir. LAR 27.4; I.O.P. 10.6. Appellants' document entitled "Payment of Legal Fees," which appears to seek an order from this Court directing the Appellees to pay Appellants' legal fees, is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

JOSEPH FESSLER and ANN FESSLER,	:	
Plaintiffs	:	
v.	:	**3:CV-07-01939**
KIRK SAUER COMMUNITY DEVELOPMENT CITY OF WILKES BARRE, et al.,	:	**(JUDGE VANASKIE)**
Defendants	:	

ORDER

NOW, THIS 25th DAY OF SEPTEMBER, 2009, upon consideration of a document entitled "Requestin [sic] Counter Suit Against Kirk Sauer Community Development Wilkes Barre, PA. Motion For Sanctions" submitted by Plaintiffs Joseph and Ann Fessler (Dkt. Entry 54), **IT IS HEREBY ORDERED THAT** Plaintiffs' Motion is **DENIED**.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie
United States District Judge

App. 6

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-4100

JOSEPH A. FESSLER; ANN FESSLER,
Appellants

v.

KIRK SAUER COMMUNITY DEVELOPMENT
CITY OF WILKES BARRE; RICHARD GELHARD,
Ex Deputy Executive Director Wilkes Barre;
LEWIS ATTORDO; JOHN G. BRAVACOS,
Area Director Department of Housing and
Urban Development; PAUL CAIN, Ex Area Director
of Housing and Director of Housing and
Urban Development; ALPHONSON JACKSON,
Secretary of Housing and Urban Development;
MARTIN C. CARLSON; HOUSING URBAN
DEVELOPMENT; ACTING US ATTORNEY

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 07-cv-1939)
District Judge: Honorable Thomas I. Vanaskie

Present: SCIRICA, *Chief Judge*, SLOVITER, McKEE,
RENDELL, BARRY, AMBRO, FUENTES, SMITH,

FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY and VAN ANTWERPEN* *Circuit Judges*

SUR PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing en banc filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc,* the petition for rehearing en banc is DENIED.

BY THE COURT:

/s/ Maryanne Trump Barry
Circuit Judge

Dated: April 6, 2010

MLR/cc:

Joseph A. Fessler
Donald H. Brobst, Esq.
Thomas J. Campenni, Esq.
J. Justin Blewitt, Jr., Esq.

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* Judge Van Antwerpen's vote is limited to panel rehearing.

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
PHILADELPHIA AREA OFFICE
CURTIS BUILDING 1 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

IN REPLY REFER TO:
3-4CM

(Filed Jan. 15, 1976)

Mr. Joseph A. Fessler
R.D. #1 Trailwood
Wilkes-Barre, Pennsylvania 18701

Dear Mr. Fessler:

Subject: Request for Hearing on Eligibility
for Relocation Payment

We have reached a determination on your appeal for a hearing as a result of denial of a Relocation payment by the Wilkes-Barre Redevelopment Authority.

We regret to inform you that we must agree with the Redevelopment Authority in denying your claim for payment under Section 601A(b)(3) of the Pennsylvania Eminent Domain Code. One of the requirements for eligibility under this section is that the business being displaced is not part of a commercial enterprise having at least one other establishment engaged in the same or similar business which is not being acquired. Your file, which we received from the Redevelopment Authority, reveals that you own a similar business at 289-291 E. Market Street.

If you are not satisfied with this decision you have the right to seek judicial review through the courts.

Sincerely,

/s/ Paul T. Cain
Paul T. Cain
Area Director